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June 24, 2011

Delta Stewardship Council
980 9th St Suite 1500
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Dear Chairman Isenberg and Council Members,

Contra Costa Water District (CCWD) appreciates the opportunity to comment on the Fourth Staff Draft Delta Plan dated June 14, 2011. The fourth draft is a significant improvement over previous drafts. We appreciate the incorporation of many of our previous comments but some issues remain outstanding.

EIR Alternatives

The alternatives discussed at the Special Session meeting on June 16, 2011 indicated that only the preferred alternative (the proposed project in the EIR) will consider further improvements to water quality. At least one of the other alternatives analyzed should include stronger water quality protections for both drinking and environmental water quality. The preferred alternative does not include language related to covered actions and water quality. Suggested language is provided below that protects environmental and drinking water quality beyond the language currently in the Fourth Staff Draft of the Delta Plan. To ensure the Draft EIR is a complete document that contains a reasonable range of alternatives, an alternative with stronger protections for water quality should be included.

Chapter 5: Restore the Delta Ecosystem

ER P1 (p. 88) states that "*the Council could determine that a covered action that would increase the capacity of any water system to store, divert, move, or export water from or through the Delta would not be consistent with the Delta Plan until the revised flow objectives are implemented.*" This is counter to WR R4 and WR R5 in Chapter 4 where the Council recommends that both DWR and the California Water Commission should identify where existing storage can be expanded or where new storage may be developed. One of the most significant actions that can be taken to improve both water supply reliability and the ecosystem restoration is to change the timing of flows and diversions such that more water is diverted during wet conditions and less during dry conditions. The council recommends a more 'natural' hydrograph, but that must be accompanied by a change in the timing of diversions and an increase in storage to ensure water supply reliability is simultaneously improved. As it is written, ER P1 would block any increases in storage or increases in diversions during wet periods, effectively undermining the opportunity to balance the flow needs of the ecosystem with other beneficial uses. This policy should be revised to be consistent with recommendations in Chapter 4 and the coequal goals.

CHAPTER 6: IMPROVE WATER QUALITY TO PROTECT HUMAN HEALTH AND THE ENVIRONMENT

This chapter has improved significantly; however the Delta Plan is still lacking water quality policies related to covered actions. At the special session Council meeting on June 16, 2011 the Council and staff stated the Delta Plan does not contain any policies because entities such as the State Water Resources Control Board, Regional Boards, Department of Public Health and the Environmental Protection Agency adequately regulate water quality. While these entities do regulate water quality, water quality impacts as a consequence of habitat restoration or other similar actions are beyond the purview of many of those agencies. For example, modeling done as part of the Suisun Marsh EIR has shown that Delta water quality can improve or degrade as a result of habitat restoration depending on a variety of factors such as location, geometry, habitat type, etc. The Delta Plan should include policies that promote much needed habitat restoration while protecting drinking water quality consistent with existing policies and regulations. The following are the minimum required policies to protect water quality.

WQ P1 *Covered actions should avoid degrading water quality to the extent feasible consistent with existing regulations and anti-degradation policies. (State Water Resources Control Board (SWRCB) Resolution No. 68-16, SWRCB Resolution No. 88-63, 40 Code of Federal Regulations section 131.12). Significant water quality degradation associated with a covered action shall be mitigated to a less than significant level.*

WQ P2 *As a responsible agency under CEQA, the Council will review environmental documentation of covered actions to ensure that the proposed covered actions minimize or mitigate Delta water quality impacts consistent with CEQA.*

WQ R1 *All dischargers to the Delta and Delta watershed should improve the quality of discharged water to the extent feasible through treatment or best management practices.*

WQ R2 *The SWRCB, the San Francisco and Central Valley RWQCBs should develop water quality regulations to protect sensitive species (for example, reducing ammonia and other constituents that adversely affect restoration goals).*

WQ R3 *The Central Valley RWQCB should complete the Central Valley Drinking Water Policy, with appropriate protections for Delta water quality and anti-degradation, as part of its Basin Plan Amendment by 2013.*

CHAPTER 7: REDUCE RISK TO PEOPLE, PROPERTY AND STATE INTERESTS IN THE DELTA

CCWD appreciates the incorporation of many comments previously submitted regarding emergency preparedness in the Delta. The draft proposes a new Delta Flood Risk Management Assessment District, RR R7 (p. 146). The proposed district should not relieve the State from its current level of levee improvement funding but rather augment it to ensure Delta levee improvements receive adequate attention and funding. As such, the proposed district must have a governance structure composed of representatives of those who would be expected to contribute to ensure equitable contributions and distribution of funds. Any such entity must have an equitable fee structure and must ensure that all beneficiaries contribute equitably towards improvements and that fees are commensurate with benefits received. Any such entity must provide evidence to support any proposed fees to ensure they are equitable.

PERFORMANCE MEASURES & IMPLEMENTATION

Water code section 85211 states that "*the performance measures shall include quantitative or otherwise measureable assessment of the status and trends*"; the current draft of the Delta Plan fails to do this. No 'baseline' has been established as part of the Delta Plan and no one is responsible for quantifying progress made towards improvement. Chapter 4 states that the California Water Plan will contain the information needed to assess water supply reliability improvements and the 2010 Urban Water Management Plans and the 2012 Ag Management Plans will be the 'baseline'. The Delta Plan does not include a recommendation for the Department of Water Resources to include specific information in the California Water Plan, nor is there a recommendation that DWR should coordinate with the Council to ensure the information within the next California Water Plan will address the needs of the Council and the coequal goals. There are no recommendations as to how the Council will track progress of the other performance measures relating to ecosystem health, water quality, risk reduction and Delta as a place. The Council should recommend specific agencies take responsibility for compiling and synthesizing data based on the performance measures outlined in the Delta Plan and provide those materials to the Council. The Council should utilize the science staff and independent science board to review those materials and develop a comprehensive technical report that quantifies and tracks progress on all of the performance measures. The information contained in that comprehensive report should be used to evaluate the effectiveness of policies within the Delta Plan and form the basis of future updates to the Delta Plan. The Delta Plan's charge is broad and although there are a multitude of agencies working to address many of the goals outlined in the Delta Plan, there must be a way to bring all of that information together in one place so the big picture of where we are and where we are going is clearly illustrated.

Our recommendations addressing these important issues and other outstanding issues are attached. CCWD looks forward to providing further input to the Delta Plan as the process continues. Please call me at (925) 688-8018 or Maureen Martin at (925) 688-8323 if you have any questions or concerns.

Sincerely,

Marguerite Naillon
Special Projects Manager

MN/MM:wec

Attachment

Technical Edits Fourth Staff Draft of Delta Plan

Global

- The reference style is inconsistent throughout the document and there are many incomplete or missing references. Please ensure that the references are complete for the final draft.

- As noted in the letter, the Council should recommend specific agencies take responsibility for compiling and synthesizing data to track trends described in the performance measures. The Council should utilize the science staff and independent science board to review those materials and develop a comprehensive technical report that quantifies and tracks progress on all of the performance measures. The information contained in that comprehensive report should be used to evaluate the effectiveness of policies within the Delta Plan and form the basis of future updates to the Delta Plan.

Chapter 1

p. 4 lines 43-44 - The Delta can be the dominant supply for many Californians depending on weather conditions, allocations and demand. More clarification is needed to define 'dominant'.

p. 10 line 25 – Both inflow and outflows towards the ocean have been reduced.

p. 11 lines 8-10 – Can this sentence be rephrased to say that roughly 40-60% of 200 MAF/yr is used for human consumption? The sentence is confusing because one of the largest water uses in California is agriculture; is that included as 'lost to evapotranspiration' or does that phrase mean all evapotranspiration other than agriculture? Much of the water that flows out to sea through the Delta has already been used many times by upstream users and in Delta users and is returned to the system. Does that water also count as lost?

p. 14 line 35 – 'maximal optimization' is redundant.

p. 15 Table 1-1 – The references are incomplete; footnotes 'a', 'b', 'c', 'e' are not sufficient for a reader to review the materials cited and footnote 'f' is missing.

p. 17 Figure 1-1 - Where do the acreage numbers come from? If there are any references they should be provided.

Chapter 4

p. 55 lines 10-11 – 'The total amount of precipitation the state receives has been roughly constant for over 100 years' contradicts all other discussion of the high variability of CA water resources. This sentence should be deleted or clarified (for example, the long term running average of precipitation is roughly constant).

p. 57 lines 5-10 – Please include what percentage is from the Delta because most of SWP and CVP water travels through the Delta as does a large portion of reused surface water so the two of those combined would equal the majority of water.

p. 60 lines 12-14 – The example of urban runoff is important and there should be a distinction made between in-basin and out of basin consequences of collecting urban runoff. Although urban runoff can be reused, it is important to note that downstream users rely on a certain amount of return flows and by not returning flows to the system (complete reuse) there may be less flow for downstream users and exporters.

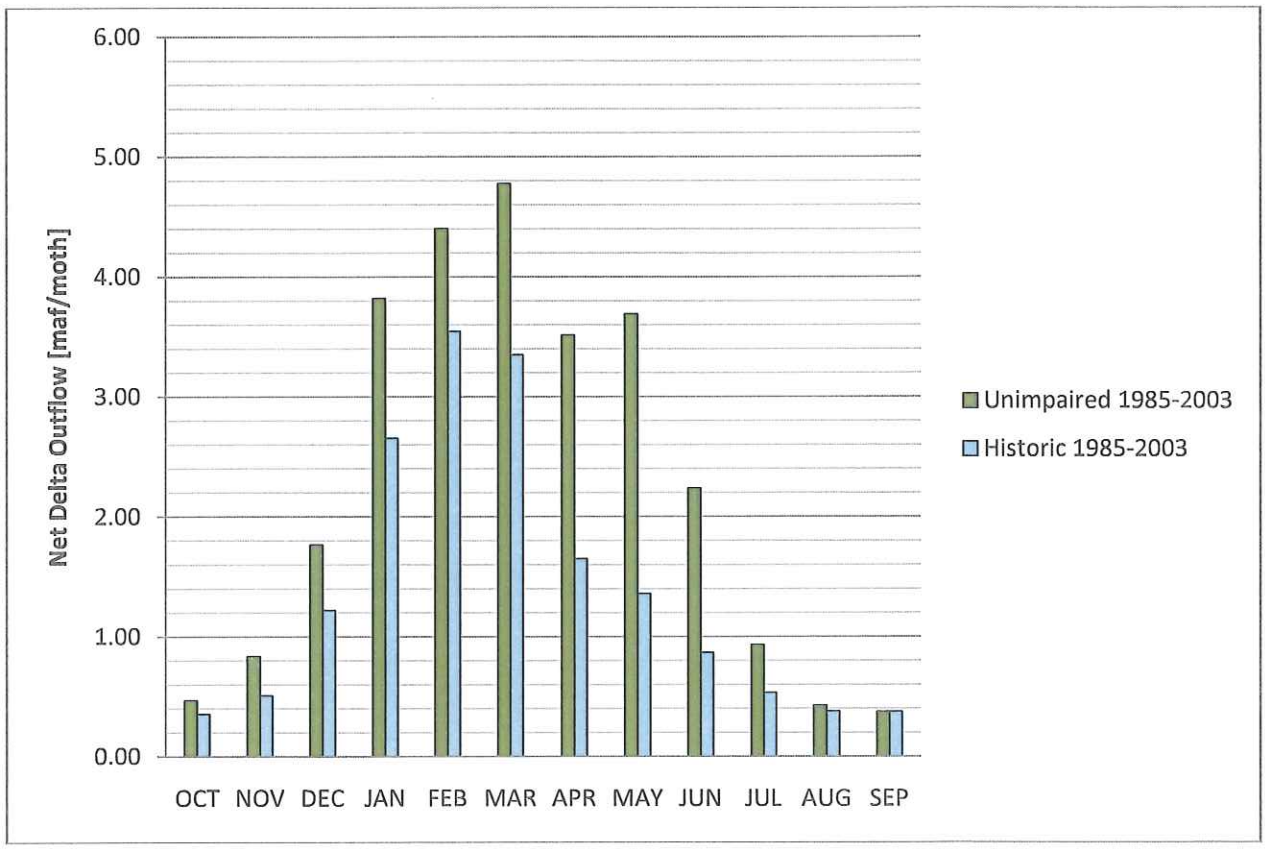
p. 64 lines 15-23 – While we support the basic concept of the regional water balance, we support a statewide agency such as DWR or SWRCB to develop guidelines for developing it rather than every local agency because it could be an extremely difficult task that local agencies could not accomplish and will lead to a diversity of regional water balances rather than one 'true' balance. The evaluation of a regional water balance will be difficult for a variety of reasons including overlapping jurisdiction of water users. For example, CCWD diverts water for municipal and industrial customers within our service area; industrial customers discharge into the Delta under their own NPDES permit while the residential customers' return flows are treated at one of five wastewater treatment plants within the service area. Further complicating the issue, one of the wastewater treatment plants receives wastewater from both CCWD customers and EBMUD customers, making it impossible to distinguish the portion of the total discharge that is derived from Delta diversions.

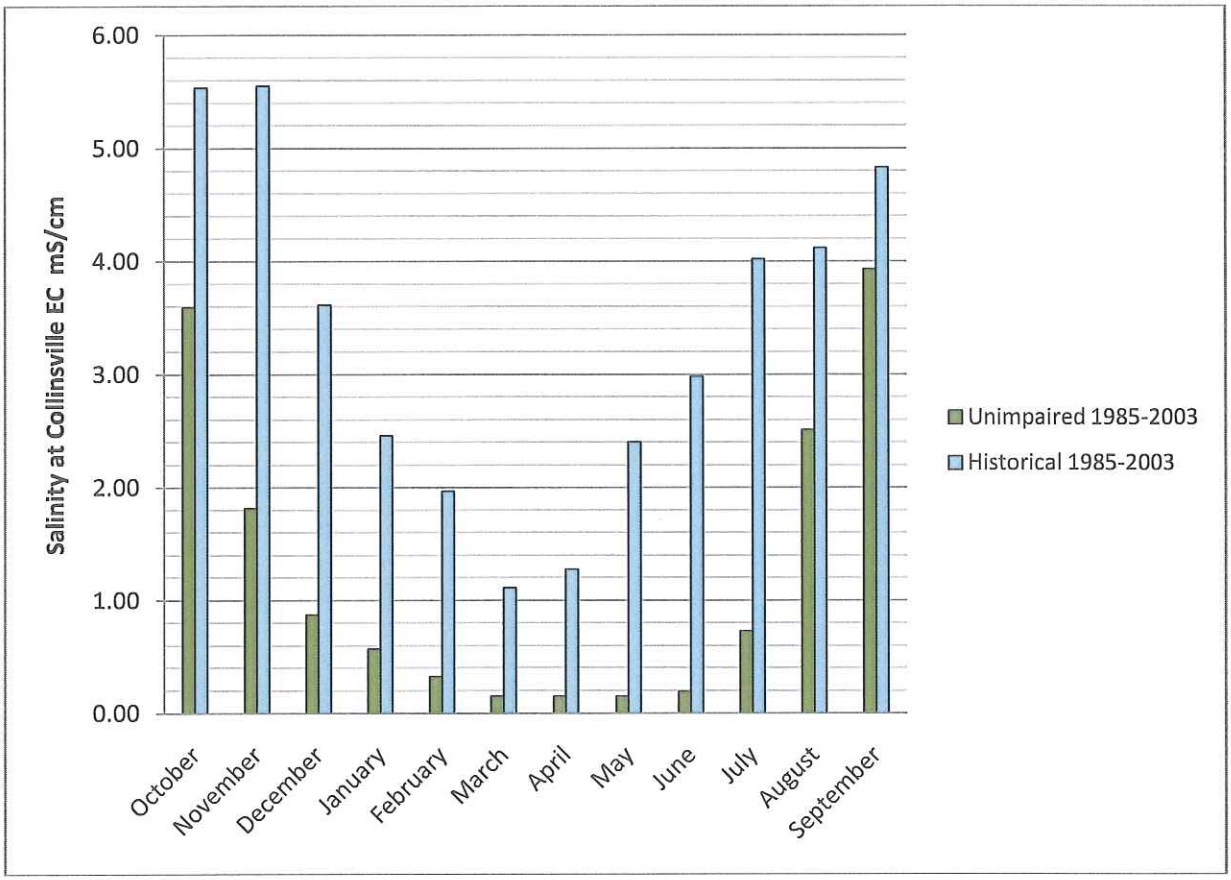
p. 64 – Footnote 13 is missing

p. 69 – The language contained in these footnotes should be incorporated into the text.

Chapter 5

p. 87 Figure 5-2 - CCWD would like to submit the following figure as complimentary figures to be included with Figure 5-2. These figures show that although Delta inflow has *increased* during certain times of the year compared to unimpaired conditions, net Delta outflow has *decreased* and western salinity has increased in all months due to the increase in exports. The Delta Plan should recognize that establishing inflow requirements alone will not restore a more 'natural' hydrograph throughout the Delta if exports effectively take all that water out of the system.





p. 88 lines 16-22 - As noted in the letter, ER P1 would halt any progress needed to improving facilities or storage. The council should not hold other projects hostage until the flow standards have been set. Lines 16 through 22 should be deleted and the rest of the policy can remain unchanged.

p. 95 lines 18-20 - The Council should be aware that previous workshops and studies on the use of salinity variation to control invasives have shown it to be infeasible for a variety of reasons. CCWD would like to participate in any workshops addressing the use of salinity variation as a means to control invasive species while protecting water supplies.

p. 96 - The Council should invite the Department of Boating and Waterways to present the results of recent efforts and the Council science staff should help evaluate the effectiveness of the current treatment program and publish a report.

p. 97 lines 21-29 should be italicized

p. 98 lines 19-20 - The Delta Plan should provide a more precise definition of where the floodplain is and what level of flooding.

Chapter 6
This chapter has improved significantly and we appreciate staff's efforts to incorporate previous comments.

p. 109 lines 4-5 – Although this chapter has improved significantly, the persistent characterization of the Delta as a stable freshwater environment year round is inconsistent with the rest of the text in the chapter and with the Figure 6-1. This sentence should be deleted because it is inaccurate and the remainder of the chapter contains more robust and detailed descriptions of Delta flows and water quality.

p. 110 lines 26-27 - Please add the following policies and recommendations to strengthen water quality protections for drinking and environmental beneficial uses:

WQ P1	*Covered actions should avoid degrading water quality to the extent feasible consistent with existing regulations and anti-degradation policies. (State Water Resources Control Board (SWRCB) Resolution No. 68-16, SWRCB Resolution No. 88-63, 40 Code of Federal Regulations section 131.12). Significant water quality degradation associated with a covered action shall be mitigated to a less than significant level.*
WQ P2	*As a responsible agency under CEQA, the Council will review environmental documentation of covered actions to ensure that the proposed covered actions minimize or mitigate Delta water quality impacts consistent with CEQA.*
WQ R1	*All dischargers to the Delta and Delta watershed should improve the quality of discharged water to the extent feasible through treatment or best management practices.*
WQ R2	*The SWRCB, the San Francisco and Central Valley RWQCBs should develop water quality regulations to protect sensitive species (for example, reducing ammonia and other constituents that adversely affect restoration goals).*
WQ R3	*The Central Valley RWQCB should complete the Central Valley Drinking Water Policy, with appropriate protections for Delta water quality and anti-degradation, as part of its Basin Plan Amendment by 2013.*

p. 114-115 - The section on pesticides would benefit from inclusion of pesticide effects on salmon migration. Much research on the subject has been done and is very meaningful in the context of statewide planning to protect endangered species. Some references include:

Iwata, M. 1995. Downstream migratory behavior of salmonids and its relationship with cortisol and thyroid hormones: A review. *Aquaculture* 135: 131-139.
Moore, A. et. al. 2007. The impact of a pesticide on migratory activity and olfactory function in Atlantic salmon (Salmo salar) smolts. *Aquaculture* 273: 350–359.
Scholz, N. et. al 2000. Diazinon disrupts antipredator and homing behaviors in chinook salmon (*Oncorhynchus tshawytscha*). *Canadian. Journal of Fisheries and Aquatic. Science.* 57: 1911–1918.
Tierny et. al 2008. Salmon olfaction is impaired by environmentally realistic pesticide mixture. *Environmental Science and. Technology 4:* 4996–5001

Chapter 7
This chapter has also improved significantly and CCWD appreciates the incorporation of many or our previous suggestions.

p. 146 line 34 - The idea of a Delta Flood Risk Management Assessment District is interesting but should not be in lieu of continuing state support for Delta levees. An equitable fee structure is needed to ensure benefits received are commensurate with fees paid.

Chapter 9
p. 169 lines 17-18 – Rationale for developing user fees should not be based on unavailability of general obligation funds. If these expenditures should be paid by general tax payer, they should remain that way. Funding should only be shifted to other stakeholders under the "beneficiary" or "stressor" methodology, not because other funding sources are not available.

p. 171 Program Cost Table – Need to identify Drinking Water Quality as a separately identified Program Function on par with Water Conveyance and Habitat Restoration.

p. 172 lines 29-33 – Is this the same agency described in RR R7? If so they should be named consistently.

Appendix F; Page 4; User Charges for Water – User Charges should be broadened beyond just water users consistent with the CUWA Black Dots Chart provided previously. Some of these are covered generally in other fees discussed in the Appendix, but this area needs significant clarification and details.

Comments from review of the Third Staff Draft that have not been addressed:

Guiding Principles – Page 168:

Bullet #1 – Eliminate exclusionary phrase that restricts State and federal funds to activities solely related to public benefits. The underlying "beneficiary pays" and "stressor pays" principles should govern who pays for what, period.

Bullets #4 and #6 – The drinking water quality objective is absent from the guiding principles and should be given equal weight to water supply reliability and ecosystem, etc.

Financing Strategy Starting on Page 172:

FP R1 – Proposition 1E is in part for protecting the State's drinking water system, so water utilities should not be included in the definition of public and private agencies with infrastructure in the Delta who must protect their own assets. To the extent public and private agencies are required to protect their own assets, then they should do so with local control. The idea of implementing a fee and passing it over to the Council for allocation creates unnecessary administrative costs, and takes the decisions for expending funds away from the local agencies who are best suited to make decision on how best to protect their assets.

FP R3 – This proposal appears to circumvent the "beneficiary" and "stressor" pays guiding principles, in that it earmarks Proposition 1E funds for a specific purpose "acquisition of land or easements for the propose San Joaquin/South Delta Flood Plain". No projects/regions should get special designation at this point in the process.

FP R4 – This proposal is devoid of specifics as to how the funding would be utilized, or what degree of oversight and control there would be over the funds. This proposal should be eliminated unless a clear scope work/business purpose and accountability structure can be demonstrated.

FP R6 – CCWD is not opposed to user fees as long as they are developed and applied equitably across all beneficiary and stressor groups, and as long as they are allocated and distributed at the local level. There is no basis for funding operations of the Council, etc. on an advance basis for ten years, when it is not clear yet what their ongoing mission will be, or whether they are best suited to implement a plan once developed.

FP R11 – It is not appropriate to establish a Public Goods Charge for Water to fund obligations currently funded by the State General Fund. This approach would circumvent the guiding principles of "beneficiary" and "stressor" pays since that analysis has not been completed, and take an activity that has broad application (ecosystem costs) and fund it from a specific group (water utilities). It should remain funded from the General Fund unless and until the "beneficiary" and "stressor" pays analysis is completed and determines another funding approach is more appropriate.